



- Date 7 =
- Date 8 =
- Date 9 =
- Date 10 =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Year 6 =
- Year 7 =
- Year 8 =
- Year 9 =
- Year 10 =
- Year 11 =
- a =
- b =
- c =
- d =
- e =
- f =
- g =
- h =
- i =
- j =
- k =
- l =
- m =
- n =
- o =

Dear :

This letter responds to your request, dated March 9, 2020, for a mandatory revised schedule of ruling amounts under § 468A(d)(3) of the Internal Revenue Code and § 1.468A-3(f)(1)(ii)(B) of the Treasury regulations. The Internal Revenue Service (Service) has approved previous requests for a schedule of ruling amounts for the Plant, most recently on Date 1. Taxpayer represents that, at this time this ruling request was submitted, the facts were as follows:

### FACTS

Taxpayer is engaged, through its disregarded regulated utility subsidiaries, in the generation and purchase of electricity, and the distribution and sale of such electricity at

retail and wholesale. Taxpayer is a State A limited liability company that elected to be treated as a corporation for federal income tax purposes. Taxpayer is a subsidiary of Parent, which is the common parent of an affiliated group of corporations filing a consolidated federal income tax return on a calendar year basis using the accrual method of accounting. Taxpayer joined Parent's consolidated group on Date 2 and will be included in its Year 1 consolidated federal income tax return beginning Date 2. Prior to Date 2, Taxpayer was the common parent of an affiliated group of corporations filing a consolidated federal income tax return on a calendar year basis using the accrual method of accounting.

Taxpayer maintains a nuclear decommissioning fund (Fund) for the Plant. The Plant is a nuclear power plant situated near Location. Taxpayer acquired an undivided qualifying interest of a percent in the Plant from Company A, effective Date 3. The Service issued a ruling addressing the income tax treatment of the Fund transfer under § 1.468A-6.

With respect to the decommissioning costs of the Plant included in the cost of service, Taxpayer is subject to regulation by Commissions A, B, and C. Prior to the transfer of the Plant to Taxpayer, Commissions A, B, and C determined the amount of decommissioning costs for the Plant to be included in Company A's cost of service for ratemaking purposes.

In Order 1, issued on Date 4, Commission A authorized a decommissioning revenue requirement of \$b for Year 1 to fund contributions to the Fund. The Year 1 revenue requirement also contemplates revenue collections and additional contributions to the Fund for Year 2 through Year 3. Order 1 applies to Taxpayer as the successor to Company A.

In Order 2, issued on Date 5, Commission B authorized collection of the c percent annual wholesale portion of the decommissioning revenue requirement, effective Date 6. Order 2 applies to Taxpayer as the successor to Company A.

State B has enacted legislation exempting Commission A ratemaking orders affecting residential customers in State B from separate approval proceedings through Commission C.

The operation, permanent shutdown, and decommissioning of the Plant are subject to the jurisdiction of the Nuclear Regulatory Commission (NRC). The original operating license for the Plant was issued by the NRC in Year 4 for d years of operation, with expiration at midnight on Date 7. On Date 8, the NRC renewed the Plant's operating license for an additional e years to Date 9.

The proposed method of decommissioning the Plant is Method. The estimated year in which substantial decommissioning costs will first be incurred is Year 3. The

estimated year in which the decommissioning of the Plant will be substantially complete is Year 5.

The estimated decommissioning costs are based on a study by Company B prepared in Year 6 (Study). The Study was provided to Commission A and was used in determining the decommissioning revenue requirement in Order 1. The total estimated cost of decommissioning expressed in Year 6 dollars is \$f. The total estimated cost of decommissioning escalated to Year 1 dollars is \$g. The total estimated cost of decommissioning expressed in Year 3 dollars (the year decommissioning costs are first expected to be incurred) is \$h.

Taxpayer's share of total and annual estimated costs of decommissioning expressed in future dollars for each year from Year 3 to Year 5 were computed by applying the cost escalation factors used in determining the decommissioning revenue requirement in Order 1. The cost escalation factors were based on the Index, as forecasted by Company C, and range from i percent to j percent (with the average rate of k percent from Year 9 through Year 10 used for each year beginning in Year 11). The assumed after-tax rates of return to be earned by the Fund assets are the rates used in determining the decommissioning revenue requirement in Order 1, and are also based on forecasts by Company C. The after-tax rates of return range from l percent to m percent from Year 1 through Year 3, and then drop to n percent for each year beginning after Year 3.

The funding period began on Date 10 and ends in Year 3. The first taxable year for which a deductible payment was made to the Fund was Year 7. Under § 1.468A-3(c)(2)(i)(A), the taxable year that includes the date the Plant will no longer be included in the rate base for ratemaking purposes, as of the first ratemaking proceeding, was Year 8. Because the operating license of the Plant has been extended to Year 3, Taxpayer elects to use Year 3 as the last year of the Plant's estimated useful life under § 1.468A-3(c)(2)(ii), and consistent with the last schedule of ruling amounts received for the Plant.

## LAW AND ANALYSIS

Sections 468A(a) and 1.468A-1(a) provide that a taxpayer that elects to apply § 468A shall be allowed as a deduction for any taxable year the amount of cash payments made by the taxpayer to a nuclear decommissioning fund during such taxable year. Section 1.468A-1(b)(1) provides that an eligible taxpayer is a taxpayer that possesses a qualifying interest in a nuclear power plant. Under § 1.468A-1(b)(2), the definition of the term "qualifying interest" includes a direct ownership interest.

Sections 468A(b) and 1.468A-2(b)(1) provide that the amount of payments made (or deemed made) by a taxpayer to a nuclear decommissioning fund during any taxable year shall not exceed the ruling amount applicable to such fund for such taxable year.

Under § 1.468A-8(a), the ruling amount limitation in § 468A(b) does not apply to a special transfer permitted under § 1.468A-8.

Section 468A(h) provides that a taxpayer shall be deemed to have made a payment to a nuclear decommissioning fund on the last day of a taxable year if such payment is made on account of such taxable year and is made within 2 ½ months after the close of such taxable year.

Section 468A(d)(1) provides that no deduction shall be allowed for any payment to a nuclear decommissioning fund unless the taxpayer requests and receives from the Secretary a schedule of ruling amounts. Section 468A(d)(2) provides that the term “ruling amount” means, with respect to any taxable year, the amount which the Secretary determines to be necessary to – (A) fund the total nuclear decommissioning cost of a nuclear power plant over the estimated useful life of such plant, and (B) prevent any excessive funding of such costs, or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate. Section 468A(d)(3) provides that the Secretary shall at least once during the useful life of the nuclear power plant (or more frequently, upon the request of the taxpayer), review, and revise if necessary, the schedule of ruling amounts determined under § 468A(d)(1).

Section 1.468A-3(a)(1) provides that, in general, a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying the annual payments (ruling amounts) that, over the taxable years remaining in the funding period as of the date the schedule first applies, will result in a projected balance of such fund as of the last day of the funding period equal to (and in no event more than) the amount of decommissioning costs allocable to such fund.

Section 1.468A-3(a)(2) provides that each schedule of ruling amounts must be consistent with the principles and provisions of § 1.468A-3 and must be based on reasonable assumptions concerning – (i) The after-tax rate of return to be earned by the assets of the nuclear decommissioning fund; (ii) The total estimated cost of decommissioning the nuclear power plant; and (iii) The frequency of contributions to such fund for a taxable year. Under § 1.468A-3(a)(3), the Service shall provide a schedule of ruling amounts identical to the schedule proposed by the taxpayer, but no schedule of ruling amounts shall be provided by the Service unless the taxpayer’s proposed schedule is consistent with the principles and provisions of § 1.468A-3 and is based on reasonable assumptions.

Section 1.468A-3(a)(4) provides that the taxpayer bears the burden of demonstrating that the proposed schedule of ruling amounts is consistent with the principles and provisions of § 1.468A-3 and is based on reasonable assumptions. If a public utility commission established or approved the currently applicable rates for the furnishing or sale by the taxpayer of electricity from the nuclear power plant, the taxpayer can generally satisfy this burden of proof by demonstrating that the schedule

of ruling amounts is calculated using the assumptions used by the public utility commission in its most recent order.

Section 1.468A-3(b)(1) provides that, in general, the ruling amount specified in a schedule of ruling amounts for any taxable year in the funding period shall not be less than the ruling amount specified in such schedule for any earlier taxable year.

Section § 1.468A-3(c)(1) provides that the funding period for a nuclear decommissioning fund is the period that – (i) Begins on the first day of the first taxable year for which a deductible payment is made (or deemed made) to such fund; and (ii) Ends on the last day of the taxable year that includes the last day of the estimated useful life of the nuclear power plant to which such fund relates.

Under § 1.468A-3(c)(2)(i)(A), except as provided in § 1.468A-3(c)(2)(ii), the last day of the estimated useful life of a nuclear power plant that has been included in the rate base for ratemaking purposes in any ratemaking proceeding that established rates for a period before January 1, 2006, is the date used in the first such ratemaking proceeding as the estimated date on which such plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

Under § 1.468A-3(c)(2)(i)(B), except as provided in § 1.468A-3(c)(2)(ii), the last day of the estimated useful life of a nuclear power plant that is not described in § 1.468A-3(c)(2)(i)(A) is the last day of the estimated useful life of such plant determined as of the date it is placed in service. Under § 1.468A-3(c)(2)(i)(C), except as provided in § 1.468A-3(c)(2)(ii), a taxpayer with an interest in a plant that is not described in § 1.468A-3(c)(2)(i)(A) may use any reasonable method for determining the last day of such estimated useful life.

Under § 1.468A-3(c)(2)(ii), if it can be established that the estimated useful life of a nuclear power plant will end on a date other than the date determined under § 1.468A-3(c)(2)(i), the taxpayer may use such other date as the last day of the estimated useful life but is not required to do so. If the last day of the estimated useful life was determined under § 1.468A-3(c)(2)(i)(A) and the most recent ratemaking proceeding used an alternative date as the estimated date on which a nuclear power plant will no longer be included in the rate base, the most recent ratemaking proceeding will generally be treated as establishing such alternative date as the last day of the estimated useful life.

Section 1.468A-3(d)(1) provides that the amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant to which the fund relates.

Section 1.468A-3(e) provides the rules regarding the manner of requesting a schedule of ruling amounts.

Section 1.468A-3(e)(1)(v) provides that the Service will not provide or revise a ruling amount applicable to a taxable year in response to a request for a schedule of ruling amounts filed after the deemed payment deadline date (as defined in § 1.468A-2(c)(1)) for such taxable year. Under § 1.468A-2(c)(1), the deemed payment deadline date is the fifteenth day of the third calendar month after the close of any taxable year.

Section 1.468A-3(e)(2) enumerates the information that must be contained in a request for a schedule of ruling amounts.

Section 1.468A-3(e)(3) provides that the Service may prescribe administrative procedures that supplement the provisions of § 1.468A-3(e)(1) and (2), and may, in its discretion, waive the requirements of § 1.468A-3(e)(1) and (2) under appropriate circumstances.

Section 1.468A-3(f)(1)(i) provides that any taxpayer that has obtained a schedule of ruling amounts pursuant to § 1.468A-3(e) must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the tenth taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received. If the taxpayer calculated its most recent schedule of ruling amounts on any basis other than an order issued by a public utility commission, the taxpayer must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline date for the fifth taxable year that begins after the taxable year in which the most recent schedule of ruling amounts was received.

Section 1.468A-3(f)(1)(ii)(B) provides that any taxpayer that has determined its ruling amount for any taxable year under a formula prescribed by § 1.468A-6 must file a request for a revised schedule of ruling amounts on or before the deemed payment deadline for its first taxable year that begins after the disposition.

Section 1.468A-6(e)(2)(ii) provides that a transferee of a qualifying interest in a nuclear power plant must file a request for a revised schedule of ruling amounts with respect to that interest on or before the deemed payment deadline for the first taxable year of the transferee beginning after the disposition.

Section 1.468A-3(f)(2) provides that any taxpayer that has obtained a schedule of ruling amounts pursuant to § 1.468A-3(e) can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of § 1.468A-3(e). The Service will not provide a revised ruling amount applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment deadline date for such taxable year.

We have examined the representations and information submitted by Taxpayer in relation to the requirements set forth in § 468A and the regulations thereunder. Based solely upon the facts as represented by Taxpayer on the date of the request, we reach the following conclusions:

1. Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under § 1.468A-1(b)(1).
2. Taxpayer, as owner of the Plant, has calculated its decommissioning costs under § 1.468A-3(d)(1).
3. The proposed schedule of ruling amounts was derived by following the assumptions contained in a Study that Taxpayer has represented is a standard type used in the industry, and that was used by Commission A in determining the decommissioning revenue requirement in Order 1.
4. Taxpayer has demonstrated, pursuant to § 1.468A-3(a)(4), that the proposed schedule of ruling amounts is based on reasonable assumptions and is consistent with the principles of § 468A and the regulations thereunder.
5. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year shall not exceed the ruling amount applicable to the Fund for such taxable year as provided by § 1.468A-2(b)(1).

Based solely on the determinations above, we conclude that Taxpayer's proposed schedule of ruling amounts satisfies the requirements of § 468A. We have approved the following revised schedule of ruling amounts.

#### APPROVED SCHEDULE OF RULING AMOUNTS

Years	Annual Ruling Amount
Year 1 through Year 3	\$0

Except as specifically determined above, no opinion is expressed or implied concerning the federal income tax consequences of the matters described above. In particular, while we have approved the proposed schedule of ruling amounts based on cost estimates contained in the Study, we make no ruling, express or implied, whether any particular item contained in the Study constitutes a nuclear decommissioning cost within the meaning of § 1.468A-1(b)(6). Additionally, if an event described in § 1.468A-6(a) occurs during a taxable year to which this schedule of ruling amounts relates, Taxpayer is limited to making payments to the Fund prior to the date of such event, regardless of the amount approved in this schedule of ruling amounts.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives. A copy of this letter ruling is also being sent to the Director. Pursuant to § 1.468A-7(a), a copy of this letter must be attached (with the required

Election Statement), to Taxpayer's federal income tax return for each year in which Taxpayer claims a deduction for payment to the Fund.

Sincerely,

Patrick S. Kirwan  
Branch Chief, Branch 6  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

cc: